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December 23, 2003

Commissioner of Social Security
PO Box 17703
Baltimore, MD 21235

Subject: 20 CFR Parts 404 and 416
Notice of Proposed Rulemaking
Reinstatement of Entitlement to Disability Benefits

Dear Commissioner Barnhart:

NISH appreciates this opportunity to comment on the proposed rules regarding the Reinstatement of Entitlement to Disability Benefits published on October 27, 2003, as provided for in section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999. Under this Act, Expedited Reinstatement (EXR) was intended to be an incentive for those people with disabilities to return to work while having something to fall back on should they be unsuccessful. We are pleased that this incentive is offered but we are concerned with the following sections.

Who is entitled to expedited reinstatement? - Section 404.1592c

Under subsection (b), the proposed rules state that a beneficiary will be denied expedited reinstatement of benefits if “(1) You previously filed a request for expedited reinstatement and we denied that request because we determined that you were not disabled under the medical improvement review standard or that you did not have a current “impairment(s) that was the same as or related to the impairment(s) that we used as the basis for your prior entitlement to that benefit; or (2) We previously determined you were no longer disabled based upon the medical improvement review standard in 404.1594 because – (i) we conducted a continuing disability review on a disability entitlement, such as a disability benefit, a disabled child benefit, a disabled widow(er) benefit or Medicare entitlement based on Medicare qualified government employment or (ii) we conducted a medical review on your Medicare entitlement that had been previously continued under 42 CFR 406.12(e).”

According to these sections, a beneficiary is only allowed to apply once for expedited reinstatement. Why is a beneficiary only allowed to file for it once? This deters people from going back to work again, and does not take into consideration certain disabilities that are cyclical and come and go over time. This also affects individuals with mental illness who may show improvement through medication and therefore be declined under the medical improvement standard. EXR is meant to be an incentive for those people who want to try

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working again without losing their benefits and this incentive is significantly less effective by limiting its use to only once. This subsection (b) should be eliminated.

How do we determine whether you are unable to do substantial gainful activity because of your medical condition? - Section 404.1592e

In section (a), the proposed regulations state that SSA "will consider special circumstances that permitted you to go to work despite your impairment to have been removed, for instance, when your employer terminates you during a general layoff from a job that you performed under special circumstances or you must stop that work due to a natural disaster." This should be amended to include people who lost their jobs because of circumstances out of their control EVEN IF they do not have special conditions or subsidies.

In using your Example 2: Mr. L is laid-off from his job because the owners are retooling the plant where he is working. Mr. L had no special circumstances under paragraph (d) of this section that enabled him to work. Since Mr. L *should* be allowed to file for expedited reinstatement even though he did not have special conditions, we feel that any former beneficiary that loses employment due to layoffs, natural disasters, or other reason, should be allowed expedited reinstatement of benefits regardless of whether special circumstances existed. Although there are indications that the economy is improving, the job market does not seem to be responding. Unemployment is still very high, especially for people with disabilities, over 70 percent, and this population is often the most vulnerable to these changes. Under this proposed ruling, those individuals considering going back to work will likely be discouraged due to the high risk of layoffs. We believe any beneficiary who leaves the disability rolls should be allowed to return under EXR, regardless of any special circumstances.

How do we determine provisional benefits? - Section 416.999d and 404.1592f

Section 416.999d outlines the payment of provisional benefits. The proposed changes discuss when a beneficiary has to repay benefits and states that Social Security determines under subsection (5)(g) "If we determine that you are not eligible to receive reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (c) of this section, will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in Sec. 416.999a".

This statement on overpayments seems very vague and clarification might be warranted, specifically related to the definition of *should have known*.

Section 404.1592f states that "(a) You may receive up to 6 consecutive months of provisional cash benefits and Medicare during the provisional benefit period, while we determine whether we can reinstate your disability benefit entitlement under Sec. 404.1592c". We are concerned about the six month timeframe allowed to determine reinstatements and the lapse in benefits in those cases where a determination is not made within the six months according to numerous

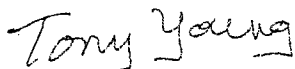
reports to this effect. We would like to see a change that would ensure all reinstatements are determined before the six months or have the timeline extended so beneficiaries are not effected.

How do we determine reinstated benefits? - Section 416.999e, discusses the determination of SSI benefits reinstatement. Subsection (f) states that "If we determine you are not eligible for reinstated benefits we will consider your request filed under Sec. 416.999a(a) your intent to claim benefits under Sec. 416.340. Clarity of the circumstances when benefits would be offered under a new claim versus reinstatement would be very helpful here as this is a vital decision that needs to be made by a beneficiary.

Ticket to Work Program – One of the general goals of the expedited reinstatement provision, indicate in section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999 "was to encourage disability beneficiaries to return to work by reassuring them that benefits would be restored in a timely fashion should they become unable to continue working and continue to meet disability standards set by SSA." A beneficiary that uses a Ticket and then applies for EXR could face difficulty in returning to the workforce under the Ticket to Work program. These beneficiaries will be receiving benefits under EXR within their previous period of eligibility thus not receiving a new Ticket. Understanding that this policy protects abuse of the system, there should be an avenue for beneficiaries that receive EXR to receive a new Ticket so they are encouraged to leave the rolls again, thus ensuring the intent of the work incentives law.

Once again, we appreciate the opportunity to comment and look forward to working with your agency on furthering employment opportunities for people with disabilities.

Sincerely,

A handwritten signature in cursive script that reads "Tony Young".

Tony Young
Assistant Vice President
Government Affairs and Workforce Development